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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,369	04/05/2001	Wolfgang Schulz	SCHULZ 2	4003

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EXAMINER

PRATT, CHRISTOPHER C

ART UNIT PAPER NUMBER

1771

DATE MAILED: 09/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/826,369	Applicant(s) WOLFGANG SCHULZ	
	Examiner Christopher C Pratt	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-15 is/are pending in the application.
- 4a) Of the above claim(s) 7,9,10 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 11-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's amendments and accompanying remarks filed 6/30/03 have been entered and carefully considered. Applicant's amendment is found to overcome the 112 indefinite rejections set forth in the previous action. Despite this advance, the amendments are not found to patentably distinguish the claims over the prior art and Applicant's arguments are not found persuasive of patentability for reasons set forth herein below.

Election/Restrictions

2. Applicant's election with traverse of group I, claims 1-6 and 11-14 in the response to the nonfinal rejection filed 6/30/03 is acknowledged. The traversal is on the ground(s) that the product cannot be made by another process because process claim 7 depends from and incorporates claim 1. Applicant has amended the original claims in an attempt to overcome the reasons for restriction previously set forth. The current product can be made by another process comprising coating instead of wet dying. The examiner notes that the product contains the limitation that the fibers are wet dyed; however, a product defined by the process by which it can be made is still a product claim (*In re Bridgeford*, 149 USPQ 55 (CCPA 1966)) and can be restricted from the process if the examiner can demonstrate that the product as claimed can be made by another and materially different process. Here, coating instead of a wet dying is a materially different process that would result in the same product.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1-6 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geisel (5674437) in view of Reinert et al (5914444).

Geisel is concerned with the creation of a fabric awning comprising polyester yarns, as set forth in the previous action. Geisel teaches a woven fabric (col. 3, line 25 and col. 5, lines 7-8). Geisel teaches continuous yarns (claim 3) and monofilaments (col. 3, line 23). Geisel teaches dip coating the fibers (col. 4, line 46), but does not specifically teach wet dyeing.

As set forth in the previous action, Reinert teaches wet dyeing with a triazine derived UV block and an anthraquinone based dye. It would have been obvious to a person having ordinary skill in the art to dye the fibers of Geisel according to Reinert's process. Such a modification would have been motivated by the desire to "isolate the fiber from the undesired effects of the environment (col. 4, lines 43-45)."

Applicant argues that Geisel fails to teach polyester; however Geisel does teach polyester in col. 3, lines 29-30.

Applicant argues that the use of round fibers is not inherent or obvious. However, round fibers are the default fiber shape in the industry. To make fibers with a different shape additional time and expense would have to be exerted to acquire additional processing equipment. Round fibers are so prevalent in the industry because they exhibit superior strength than other fiber shapes. Therefore, there is a strong

implication that, in the absence of a teaching otherwise, round fibers are inherently used. If not, it would be obvious to utilize round fibers for the reasons set forth above.

Applicant argues that the instant invention has a list of "new properties and advantages." This argument is not persuasive because these properties are not part of the claim. Moreover, these properties would be inherent in the combination set forth by the examiner.

Applicant argues that Reinert only teaches dyeing cellulosic fibers. However, Reinert also teaches dyeing polyester fibers (col. 21, line 64).

5. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Geisel (5674437) in view of Reinert et al (5914444) and Curtis et al (4719954).

The combination of Geisel and Reinert fail to teach articulated arms. Curtis is concerned with the creation of an awning fabric comprising articulated arms (fig. 1). It would have been obvious to a person having ordinary skill in the art to utilize articulated arms in the awning of Geisel and Reinert. Such a modification would have been motivated by the desire to improve the functionality of the awning.

6. Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geisel (5674437) in view of Reinert et al (5914444) and Delker (5652057).

The combination of Geisel and Reinert fail to teach a delustrant and lubricant. Delker teaches that delustrants and lubricants are very common additives used in polyester monofilaments (col. 9, lines 35-45). It would have been obvious to a person

having ordinary skill in the art to include these additives in the fibers of Geisel and Reinert. Such a modification would have been motivated by the desire to improve the properties of said fibers.

With respect to the claimed warp rate and weft density, it would have been an obvious modification to alter the weaving properties of the fabric. Altering filament density is a common modification motivated by financial concerns and the desired properties of the awning.

7. Claims 1-6 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Xiao et al (5747392) in view of Linville (4679519) and Reinert et al (5914444).

Xiao teaches a woven fabric comprised of polyester fibers (col. 4, lines 20-24). Because Xiao teaches the use of "fibers," as opposed to yarns, it is likely that Xiao is referring to monofilaments; however, this is not explicitly stated.

Linville teaches the use of polyester monofilaments in woven awning fabrics (col. 2, lines 38 and col. 4, lines 5-13). It would have been obvious to utilize monofilaments as fabric of Xiao. Such a modification would have been motivated by the desire to reduce the weight of the fabric.

The combination of Xiao and Linville fails to teach wet dyeing. As set forth in the previous action, Reinert teaches wet dyeing with a triazine derived UV block and an anthraquinone based dye. It would have been obvious to a person having ordinary skill in the art to dye the fibers of Xiao according to Reinert's process. Such a modification

would have been motivated by the desire to impart color to the fabric of Xiao while protecting from sun damage.

With respect to claims 2, applicant argues that Xiao's fabric is heavier than the claimed fabric. This argument is not germane to the instant rejection because the examiner previously set forth the position that it would have been obvious to reduce the weight of Xiao's fabric.

8. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Xiao et al (5747392) in view of Linville (4679519), Reinert et al (5914444), and Curtis et al (4719954).

The combination of Xiao, Linville, and Reinert fail to teach articulated arms. Curtis is concerned with the creation of an awning fabric comprising articulated arms (fig. 1). It would have been obvious to a person having ordinary skill in the art to utilize articulated arms in the awning of Xiao. Such a modification would have been motivated by the desire to improve the functionality of the awning.

9. Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Xiao et al (5747392) in view of Linville (4679519), Reinert et al (5914444) and Delker (5652057).

The combination of Xiao, Linville, and Reinert fail to teach a delustrant and lubricant. Delker teaches that delustrants and lubricants are very common additives used in fibers (col. 9, lines 35-45). It would have been obvious to a person having

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ordinary skill in the art to include these additives in the fibers of Xiao. Such a modification would have been motivated by the desire to improve the properties of said fibers.

With respect to the claimed warp rate and weft density, it would have been an obvious modification to alter the weaving properties of the fabric. Altering filament density is a common modification motivated by financial concerns and the desired properties of the awning.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Pratt whose telephone number is 703-305-6559. The examiner can normally be reached on Monday - Friday from 7 am to 4 pm.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Christopher C. Pratt
September 5, 2003

